IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7280 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANSABEN W/O RANCHHODBHAI M PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7280 of 2002

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged her detention order dated 20-7-2002, by which she was detained as a "bootlegger" under the Prevention of Antisocial Activities Act, (for short "the PASA" Act). Along with the order of detention, she is also served with the grounds of detention of the same date. In the said grounds, there is a reference about

some pending criminal cases against the petitioner under the Bombay Prohibition Act. The detaining authority has also considered the statement of certain witnesses and ultimately, after considering the material on record, the detention order was passed. The petitioner has challenged the aforesaid order on various grounds.

2) The learned advocate for the petitioner submitted that the petitioner made a representation to the detaining authority on 25th July, 2002 and the same was decided by the detaining authority on 28th July, 2002. However, in the meantime, the State Government has also approved the detention order by its order dated 26th July, 2002, which has been decided by the State Government on the same day. The said order is communicated to the petitioner. The order of State Government, as well as the representation of the petitioner both are kept on record. It is argued by Mr.Dave, learned advocate for the petitioner, that at the time when the Police Commissioner, Surat, the detaining authority, decided the representation of the petitioner, the State Government had already approved the detention order on 26th July, 2002. He has submitted that as the detention is approved on the aforesaid date, the detaining authority should not have decided the representation of the petitioner on 28th July, 2002 as he has no authority to decide the same, especially when the State Government has approved the detention order. In this behalf he has relied on the decision of the Apex Court in the case of Navalshankar Ishwarlal Dave and another v. State of Gujarat reported in AIR 1994, Supreme Court, page 1496, wherein the Apex Court in paras 7 and 8 has observed as under :

"7. There appears to be a seeming overlap in consideration of the representation of the detenu and its effect on the orders by the authorities concerned. It is seen that under sub-sec.(1) of Section 3 the State Government, is empowered to pass an order of detention in which event it has to report to the Advisory Board as envisaged in Section 11. If an order of detention was made by the authorised officer, he shall report the same as early as possible without any delay and the State Government shall approve the same within 12 days from the date of its making. In other words, the effect would be that the authorised officer should report as early as possible from the date of the execution of the order of detention to the Government and the order remains valid and in force for 12 days from the date of

execution. If the order is not approved by the State Government within 12 days, the order of detention shall stand lapsed. For continuance after 12 days approval is mandatory and remains as fence till it is approved by the Advisory Board. If the Board disapproves, the State Government shall release the detenu forthwith. It is a condition precedent. If the Board approves it then the State Government shall confirm it. However, its operation is for one year from the date of the execution under Section 3(3)(i). However, within three weeks from the date of detention the State Government shall report to the Advisory Board and within seven weeks from the date of detention the Board should give its opinion. The detaining authority has no express power under PASA to revoke the order of detention after the approval given by the State Government under sub-section (3) of Section 3 of PASA. The power to rescind the detention order, therefore, would be available to the authorised officer under Section 21 of the General Clauses Act only during its operation for 12 days from the date of execution of the detention order or approval by the State Government whichever is later. The general power of revocation was conferred only on the State Government that too in writing for reasons to be recorded in that behalf. By necessary implication flowing from Section 3(3) and concomitant result is that the authorised officer has no express power or general power under Section 21 of the General Clauses Act to revoke or rescind or modify the order after the State Government approved of it under sub-section (3) of Section 3 read with Section 3(1). The State Government alone, thereafter has power to revoke or rescind the order of detention either on representation under Art.22(5) or under Section 15 of PASA. The representation should be disposed of accordingly. The reason is obvious that once the order of detention was approved by the State Government within the aforesaid 12 days period or confirmed by the Advisory Board within the period of seven weeks the exercise of power by the authorised officer would run counter to or in conflict thereof. The State Government has been expressly conferred with powers under Section 15 to revoke, rescind or modify the order of detention at any time during one year from the date of making the order of detention. Therefore, the right of

representation guaranteed under Article 22(5) would, therefore, i.e. approval under Section 3 (3) be available to the detenu for consideration by the State Government.

8. The word 'forthwith' has been interpreted by this Court by plethora of precedents and it is not necessary to burden the judgement by referring them once over copiously, though the counsel to the appellants has relied on them. This Court held that the expression 'forthwith' would mean 'as soon as may be', that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor a particular period is prescribed. There should not be any indifference or callousness in consideration and disposal of the representation. It depends on the facts and circumstances of each case. Any delay in consideration of the representation should be satisfactorily explained. If no satisfactory explanation has been given or found to be wilful or wanton or supine indifferent it would be in breach of the constitutional mandate of Artilce 22(5). The liberty of a person guaranteed under Article 21 of the Constitution is a cherished right and it can be deprived only in accordance with law."

3) It is required to be noted that even if the authority wanted to accept the representation of the petitioner, it has no jurisdiction to do so, as the State Government has already approved the detention order on 26th July, 2002.

4) It is submitted by Mr.Dave that when on 26th July, 2002, the State Government has approved the detention order, the Commissioner of Police, should have sent the representation to the State Government on 27th July, 2002 or even on a subsequent date, instead of deciding it on his own. The detaining authority-Commissioner of Police has tried to explain this aspect in para 19 of the reply as under :

"With respect to paras 19 and 23 of the petition, I say and submit that the representation dated 25-7-2002 made by the Advocate of the petitioner, received in my office on 26-7-2002 and after due consideration, it was rejected by me. So far the

statements recorded under Section 161 of the Criminal Procedure Code are concerned, all the statements have already been furnished to the detenu and nothing more than that is required to be supplied. So far the Forensic Science Laboratory report is concerned, they have not taken into consideration while passing the order of detention. The petitioner was intimated by way of letter dated 28-7-2002, through the jail Authority.

It is pertinent to note that the State Government approved the detention order on 26-7-2002. The order of the approval of the detention order was conveyed by the Government to the petitioner through the Jail Authority and copy to this office vide their letter dated 26-7-2002. The said letter was received by this office on 2-8-2002. I had applied my mind and rejected the representation of advocate of the petitioner. The decision of rejection was conveyed to the petitioner vide this letter dated 28-7-2002."

5) However, it is required to be noted that the authority has mainly stated about the communication of the order but he has not stated whether he was aware about such order passed by the State Government on 26th July, 2002. Apart from the aforesaid aspect, the detaining authority has not stated as to why the representation was not decided forthwith on 27th July, 2002. Considering the aforesaid aspect, the detaining authority has no authority to decide the representation which is approved by the State Government on 26th July, 2002.

6) In view of the above, the petition is allowed. The order of detention dated 20-7-2002 is quashed and set aside. The detenu, Hansaben W/o Ranchhodbhai M.Patel, is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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